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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,119	07/09/2003	Brian Edward Unkenholz	046538-00002	2199

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09/22/2004

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EXAMINER

MEREK, JOSEPH C

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/616,119	Applicant(s) UNKENHOLZ, BRIAN EDWARD	
	Examiner Joseph C. Merek	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/07/03</u> . | 6) <input type="checkbox"/> Other: _____ |

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "the means for preventing the fluid flow includes a clamp" or the means for preventing a fluid from flowing through the tube and the means for securing the tube adjacent the wall comprise a single member" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 6-8, 18, 22, and 23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claim 6, it has not been adequately disclosed as to how the fluid flow is prevented from leaving the tube by a clamp. Regarding claims 8, 18, and 22, it has not been adequately disclosed that the means for securing the tube adjacent to the wall and the means of preventing a fluid from flowing through the tube comprise a single member. The remaining claim(s) is/are included since they stem from rejected claims.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6-8, 18, 22, and 23 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 6, it has not been adequately disclosed as to how the fluid flow is prevented from leaving the tube by a clamp. Regarding claims 8, 18, and 22, it has not been adequately disclosed that the means for

securing the tube adjacent to the wall and the means of preventing a fluid from flowing through the tube comprise a single member. It is not clear what is being claimed. The remaining claim(s) is/are included since they stem from rejected claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 8, 9, 10, 11-13, 18, 19, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Edstrom, Sr. (US 5,484,405). Regarding claims 1, 11, and 19, see Figs. 1-6, where the claimed structure is shown. Figs. 3 shows the open top of the cup. The means for securing the tube adjacent the wall is the opening between the top rim of the cup and the bracket 38 as seen in Fig. 1. Moreover, the tube has positioning bar(s) as seen in Figs. 4 and 9 which are capable of holding the tube 62 in position. The bars are capable of holding the tube in position adjacent to the wall. The secured adjacent does not require the tube to be secured to the wall of the container. Regarding claims 2 and 12, 34 functions as the handle, which is capable of being grasped by the user. Regarding claim 3, see Fig. 2 where the means is shown. Regarding claim 9, see Fig. 2. Regarding claim 10, see Fig. 3. The angle of the tube is adjustable since the tube is flexible. Regarding claim 13, see Fig. 3 where the conduit is seen in Fig. 3 as 58. Regarding claim 8 and 18, the as it is best understood, the means for securing the

tube adjacent the container wall is the wire that extends into the valve 12 as seen in Fig. 5, there are considered the same element. They are secured to each other. Regarding claim 23, the method steps are not required to be performed in a particular order the steps are performed in using the cup of Edstrom, Sr. As seen in the drawings the cup is raised relative to the user in Figs. 1 and 2. 94 must be disengaged to allow fluid to flow. The free end of the tube is placed in the desired location as seen in Fig. 1. The tube is disengaged from the container as it is placed in proper position. The method does not prohibit the tow form occurring at the same time.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andreozi (US 4,607,755) in view of Appleman (US D 360,558). Regarding claims 1, 11, and 19, Andreozi teaches the invention but does not teach the opening in the central portion of the bottom. Appleman as seen in Figs. 1-7, teaches a similar container where the opening is in central portion of the bottom. It would have been

obvious to employ the bottom opening of Appleman in the container of Andreozzi to allow for more complete emptying of the container. See Fig. 3 of Andreozzi where the means for preventing the fluid from leaving the tube is valve 42. This is considered an equivalent of the plug since it closes the opening of the tube and allows for the fluid to flow upon suction. Moreover, applicant has described in the specification what are considered "equivalents" to the plug. Regarding claims 2 and 12, the handle is 26 as seen in Fig. 1 and 2 of Andreozzi. Regarding claims 3 and 4, the means is the end of the container as seen in Fig. 3 of Appleman that has the opening for the tube. This structure is in the modified container of Andreozzi. Regarding claims 5 and 17, see Fig. 1 of Andreozzi where the clasp is 40. Regarding claims 6 and 16, the plug is 42 since it closes the end of the tube. Moreover, regarding claims 6, 7, and 16, Official notice is taken that it is well known to employ plug closure and to tether such closure to container walls. It would have been obvious to employ a plug closure to provide free fluid flow once the closure is removed and it would have been obvious to tether the plug to the container wall to prevent losing the plug. Regarding claim 8, as it is best understood, the two are not required to be a single member. Regarding claims 9 and 10, see Figs. 1 and 2 of Andreozzi. Regarding claim 13, see Fig. 6 of Appleman where the conduit is connected to the tube. The conduit is the pipe that connects the center of the bottom with the tube on the edge of the container. Regarding claims 14 and 15, the rim is seen in Fig. 3 of Appleman near where the tube projects outward of the sidewall through the opening. Regarding claim 20, the conduit is substantially "I" shaped since the conduit turns to enter the opening thus forming an "L". The term substantially is broad and

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allows for a large amount of variation from an exact "L" shape. Regarding claim 21, official notice is taken that it is well known to make conduits adjustable. It would have been obvious to employ an adjustable conduit in the modified container of Andreozzi to make it easier to place the tube in positions as desired by the user. Regarding claim 22, as it is best understood, the means are not required to be the same. Regarding claim 23, the method of claim 23 is an obvious method if using the modified container of Andreozzi. If applicant argues a position to the contrary then the examiner will institute a restriction in the next office action based upon applicant's arguments. The arguments will provide the grounds for the restriction.

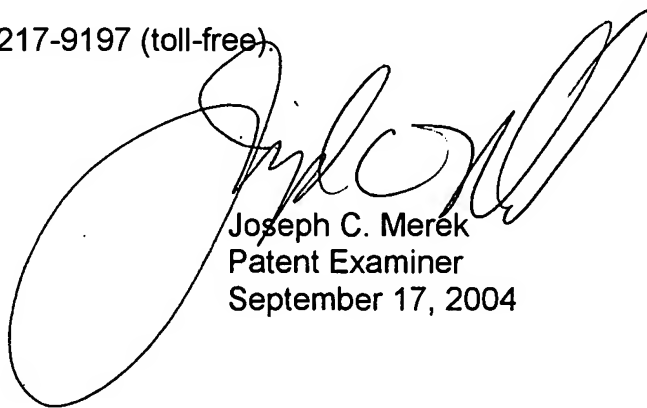
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph C. Merék
Patent Examiner
September 17, 2004